*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

+ W.P.NOs.3040 AND 3161 OF 2005

% 01-04-2005

+ W.P.No.3040 of 2005

Dr. Obulapuram Raja Sekhar, S/o. O. Pullaiah, Alias Paul, Osmanial General Hospital, Hyderabad.

….Petitioner

Versus

$ The Registrar, N.T.R. University of Health Sciences, Vijayawada-520 008 and others

....Respondents

! Counsel for the Petitioner: Mr. M.Ramgopal Rao

^ Counsel for the Respondent No.1: Mrs. Y.Padmavathi

Counsel for the Respondent No.2: Mr. V.V. Prabhakara Rao

Counsel for the Respondent No.4: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent No.5: Mr. Deepak Bhattacharjee

+ W.P.No.3161 of 2005

Dr. Sunga Prathyusha, D/o. S. Rajeswara Rao, Osmania General Hospital, Hyderabad.

…..Petitioner

Versus

$ The Registrar, N.T.R. University of Health Sciences, Vijayawada-520 008 and others

…Respondents

! Counsel for the Petitioner: MR.M.RAMGOPAL RAO

^ Counsel for the Respondent No.1: SMT.Y.PADMAVATHI

Counsel for the Respondent No.2: Mr.V.V. Prabhakara Rao

Counsel for the Respondent No.4: G.P. for Medical Health and Family Welfare.

Counsel for the Respondent No.5: Mr. Deepak Bhattachargee

< Gist:

> Head Note:

? <u>Cases referred</u>:

1. (2002) 7 SCC 258

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION Nos: 3040 and 3161 of 2005

WRIT PETITION NO: 3040 of 2005

Between:

Dr. Obulapuram Raja Sekhar, S/o. O. Pullaiah, Alias Paul, Osmanial General Hospital, Hyderabad.

... PETITIONER

AND

1 The Registrar, N.T.R. University of Health Sciences, Vijayawada - 520 008.
2 The Director, Nizama's Institutute of Medical Sciences, Punjagutta,

Hyderabad.
3 Principal, Osmanial Medical College, Hyderabad.
4 Government of Andhra Pradesh, represented by Principal Secretary, Health,

Medical & Family Welfare Department, Secretariat, Hyderabad.
5 The Superintending, Osmania General Hospital, Hyderabad.
6 The Medical Council of India, rep. by its Registrar, New Delhi
R6 is impleaded as per court order dated 1-4-2005 in WPMP 5903 of 2005

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of mandamus declaring that the petitioner is entitled to participate in the P.G. Entrance Test pursuant to the notification dated 24-1-2005 issued by the N.T.R. University of Health Sciences, Vijayawada and also NIMS after duly receiving the application of the petitioner with all consequently benefits by holding the action of the petitioner to appear for P.G. Entrance test on the ground that the internship has not been completed by 30-4-2005 for which the petitioner is not way responsible as the delay in commencement of Internship on the part of the authorities is as illegal, arbitrary, discriminatory, unjust and subversive of Articles 14, 16 and 21 of the constitution

Counsel for the Petitioner: MR.M.RAMGOPAL RAO

Counsel for the Respondent No.4: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent No.1: Mrs. Y.Padmavathi

Counsel for the Respondent No.2: Mr. V.V. Prabhakara Rao

Counsel for the Respondent No.5: Mr. Deepak Bhattacharjee

WRIT PETITION NO : 3161 of 2005

Between:

Dr. Sunga Prathyusha, D/o. S. Rajeswara Rao, Osmania General Hospital, Hyderabad.

... PETITIONER

AND

1 The Registrar, N.T.R University of Health Sciences, Vijayawada, Krishna District - 520 008.
2 The Director, Nizam's Institute of Medical Sciences, Punjagutta, Hyderabad
3 The Principal, Osmania Medical College, Hyderabad.
4 The Government of Andhra Pradesh, Rep. by its Secretary Health, Medical &

Family Welfare Department, Secretariat, Hyderabad.
5 The Superintendent, Osmania General Hospital, Hyderabad.
6 The Medical Council of India, Rep. by its Registrar, New Delhi.

...RESPONDENTS

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Counsel for the Petitioner: MR.M.RAMGOPAL RAO

Counsel for the Respondent No.1: SMT.Y.PADMAVATHI

Counsel for the Respondent No.2: Mr.V.V. Prabhakara Rao

Counsel for the Respondent No.4: G.P. for Medical Health and Family Welfare.

Counsel for the Respondent No.5: Mr. Deepak Bhattachargee

The Court made the following order:

COMMON ORDER:

Petitioners have passed M.B.B.S examination in March/April, 2004 from Osmania Medical

College. The results of the said examination were announced by the NTR University of Health Sciences, Vijayawada in Rc.No.E1/00682/2004 dated 23.04.2004. Petitioners have intimated the Registrar, NTR University to commence their Internship for one year from 30.04.2004. They have registered their names temporarily for House Surgeonship (Internship) for one year in A.P.Medical Council on 29.04.2004. The Principal, Osmania Medical College, Hyderabad issued letter No.B4/UG/Acad/OMC/2004 dated 29.04.2004 requesting the Superintendent, Osmania General Hospital (OGH), Hyderabad to issue posting orders to the successful candidates for compulsory Internship from 30.04.2004. The said letter was received by the Superintendent, OGH, on 29.04.2004 itself so as to enable to the petitioners to commence their Internship Course of one year from 30.04.2004 as per the schedule.

Other medical colleges in the State have commenced the Internship as per the Schedule fixed by their respective Universities from 30.04.2004 but however, in the case of the petitioners the Superintendent, OGH, posted orders for Internship on 05.05.2004. Under these circumstances, the petitioners joined the internship for one year on 05.05.2004 and the same would be completed on 04.05.2004. It is stated that the Superintendent, OGH, in stead of issuing the posting orders on 30.04.2004 so as to enable the petitioners to complete their internship on or before 30.04.2005, the posting orders were issued on 05.05.2004, as there was an administrative delay on the part of the Superintendent, OGH, for no fault of the petitioners.

That being the position, the NTR University of Health Sciences, issued notification for P.G. Entrance vide Endt.No.5096/EA2/2004 dated 24.01.2005 inviting applications form the eligible candidates for admission into the Post Graduate courses in MS/MD for the year 2005-06. As per the said notification the eligibility criteria to appear for the said entrance test are that the candidates must have passed MBBS examination and have completed their internship on or before 30.04.2004.

Similarly, the Nizam's Institute of Medical Sciences (NIMS) also issued a notification inviting the applications from the eligible candidates for admission into PG Medicine Specialty Courses of MD/MS and as per the notification the eligibility criteria are that the candidates must have passed MBBS course from the medical colleges recognized by the

Medical Council of India (MCI) and have completed the Internship or will be completing the internship on or before 30.04.2004. The schedule for completion of admission and particulars of Medical and Dental Courses have been issued pursuant to the letter of MCI dated 28.01.2005.

The NTR University of Health Sciences fixed the last date for submission of filled in application forms on 21.02.2005 upto 5-00 PM, the dates for issuance of Hall Tickets are 25.02.2005 & 26.02.2005, the date and time of entrance test on 27.02.2005, announcement of results on 04.03.2005, dates for first counseling on 14.03.2005 onwards and the last date for reporting to colleges and submission of papers after 1st counseling is 30.04.2005, commencement of classes on 01.05.2005, dates for the second counseling from 09.05.2005 onwards, the last date for reporting to colleges and submission of papers on 20.05.2005 and the last date for closing the admission is on 31.05.2005.

Similarly, in case of NIMS the last date for submission of filled in application forms is 21.02.2005, date and time of entrance test on 03.04.2005, announcement of results on 04.04.2005, counseling commences from 14.04.2005, which shall be completed by 25.04.2005, commencement of classes on 02.05.2005 and the last date for closing the admission is on 31.05.2005.

It is stated that the NTR University of Health Sciences has 600 seats in various courses whereas the NIMS has 20 seats in various specializations respectively. It is stated that the petitioners will be completing one year internship only on 04.05.2005 due to the delay caused by the Superintendent, OGH, in posting the petitioners. The petitioners have made a representation to the NTR University of Health Sciences and others on 31.01.2005 requesting to consider their case to appear for entrance test, as the delay of four days in completing the Internship is not their mistake but on account of the delay by the Osmania General Hospital. Accordingly, the Principal, OGH, by his letter dated 29.04.2004 requested the Registrar, NTR University Health Sciences and also the Director, NIMS to consider the request of the petitioners to permit them for ensuing the Post Graduate Entrance Test – 2005 as their names have been forwarded to the Superintendent, OGH for internship by the Principal, OGH on 29.04.2004. But the authorities have posted the petitioners for one year compulsory internship from 05.04.2004 to 04.05.2005. But the said request of the Osmania

General Hospital was not considered and the applications of the petitioners for the PGMET-2005 was not received on 19.02.2005 on the ground that there is a shortage of four days to fulfill the eligibility criteria of completing the internship course by 30.04.2005 as they would be completing the said internship by 04.05.2005.

As the entrance test of the NTR University of Health Science was scheduled to be held on 27.02.2005 they have filed these two writ petitions. Therefore, this Court by order dated 25.02.2005 in WPMP.No.4108 of 2005 in WP.No.3040 of 2005 directed the respondents to allow the petitioner to appear in the entrance test to be held on 27.02.2005 making it clear that the result of the petitioner shall not be declared until further orders. Accordingly, the petitioner in WP.No.3040 appeared for the said entrance test.

Similarly, in the case of petitioner in WP.No.3161 of 2005 this Court by order dated 21.02.2005 directed the Director, NIMS to receive the application of the petitioner subject to further orders in the writ petition. Accordingly, the Director, NIMS, has received the applications of both the writ petitioners and the entrance test is scheduled to be held on 03.04.2005. In view of the said urgency the writ petitions have been taken up for final disposal.

The question that arises for consideration as to whether the petitioners are eligible for admission into the Post Graduate Medical Entrance Test of MD/MS.

Learned counsel for the respondents submits that as per the judgment of the Supreme Court in Medical Council of **MEDICAL COUNCIL OF INDIA v. MADHU SINGH AND OTHERS** and as per the communication received by the respective medical colleges from MCI on 28.01.2005, the petitioners do not fulfill the eligible criteria and there is shortage of four days for completing the internship course. Therefore, they cannot be permitted to appear for entrance test to the PG Medicine Specialty Courses of MD/MS. It is stated that the Apex Court in the said case issued the following directions, which are extracted below:

"There is however, a necessity for specifically providing the time schedule for the course

and fixing the period during which admissions can take place, making it clear that no admissions can be granted after the scheduled date, which essentially should be the date for commencement of the course. In conclusion

i. there is no scope for admitting midstream as that would be against the very spirit of statutes governing medical education;

ii. even if seats are unfilled that cannot be a ground for making mid-session admissions;

iii. there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

iv. MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

v. Different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time;

vi. No variation of the schedule so far as admissions are concerned shall be allowed;

vii. In case of any deviation by the institution concerned, action as prescribed shall be taken by the MCI."

The same have been reiterated by the MCI in its letter dated 28.01.2005 and requested to take all required steps to ensure strict adherence and the compliance of the above mentioned time schedule for admission in PG and Super Specialty Medical Courses for the academic year 2005-06. It may not be permissible to consider any request from any medical college, institute or authority to extend the last date of admission prescribed as 31.05.2005 for PG Medicine courses. Any admission after the last date 31.05.2005 would be necessarily called for appropriate proceedings by the MCI.

Therefore, the only question that arises for consideration in these writ petitions is as to whether the petitioners are eligible for admission into the PGMET of MD/MS.

I have perused the judgment of the Apex Court (1 Supra) and the letter of the Medical Council of India. In the instant case all the batch mates of the petitioners have been admitted into the internship course in time but due to the delay of four days in posting, the petitioners were posted on 04.05.2004 in the internship course, which occurred due to the negligence on the part of the Superintendent, Osmania General Hospital but not for the fault of the petitioners. Therefore, the Superintendent, Osmania General Hospital also addressed a letter to the NTR University of Health Sciences stating that there was a delay of four days

on the part of the Hospital authorities in posting the petitioners for internship course, as a result the petitioners were posted for internship on 04.05.2004 in stead of posting them on 30.04.2004 and they will be completing the said internship course by 04.05.2005. Even if petitioners are admitted from 04.05.2005 it cannot be said that they will be admitted into mid-stream after commencement of the course.

As per schedule clause No.8 (3) of the Medical Council of India, every selected student for admission into the Post-Graduate Medical Courses in any medical institute in the country is entitled to obtain the qualification certificate qualifying him to be admitted to Post Graduate Course within one month from the date of admission. The Post Graduate Courses will commence only from 02.05.2005 and the last date for closing the admissions is on 31.03.2005 and therefore, the eligible candidates are entitled to be admitted in the PG Courses up to 31.05.2005. If the petitioners are not considered for admission while considering the cases of their batch mates it will amount to discrimination, for no fault of the petitioners.

Therefore, I am of the view that the admission of the petitioners is not in violation of any of guidelines of the Medical Council of India or contrary to the direction of the Apex Court.

Accordingly, the writ petitions are allowed directing the first respondent to declare the result of the petitioner in WP.No.3040 of 2005 and permit him for counseling. Similarly, the Director of Nizam's Institute of Medical Sciences is directed to permit both the petitioners to appear for the entrance test scheduled to be held on 03.04.2005 and consider their case for admission on par with other candidates. No costs.

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V. ESWARAIAH, J

April 1, 2005

Dsk

That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice on this

Friday the First Day of April Two Thousand and Five.

To

1 The Registrar, N.T.R. University of Health Sciences, Vijayawada - 520 008.
2 The Director, Nizama's Institutute of Medical Sciences, Punjagutta,

Hyderabad.
3 The Principal, Osmanial Medical College, Hyderabad.
4 The Principal Secretary, Health, Medical & Family Welfare Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
5 The Superintending, Osmania General Hospital, Hyderabad.
6 The Registrar, Medical Council of India, New Delhi

7 Two CCs to GP For Medical Health & Family Welfare, High Court Buildigns,

Hyderabad (OUT)

Two CD Copies.